

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CATALINA MARKETING CORPORATION,)
and CATALINA HEALTH RESOURCE, LLC)

Plaintiffs,)

vs.)

LDM GROUP, LLC,)

Defendant.)

Case No. 4:09CV01114 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiffs' Motion to Compel Production of Documents and Electronically Stored Information [doc. #87], and LDM Group, LLC's Motion to Strike Improper Chart, Compel Production of a Proper Privilege Log, or in the Alternative, Waive Claimed Protections [doc. #88]. A hearing on these Motions was held on September 30, 2009, and both Parties presented oral arguments.

In their Motion to Compel, Plaintiffs Catalina Marketing Corporation and Catalina Health Resource, LLC ("Plaintiffs") argue that Defendant LDM Group, LLC ("Defendant") has failed to comply with its obligations under paragraphs 3(b) and 3(c) of the Discovery Order, specifically with respect to electronically stored information. Plaintiffs identified four categories of information that they seek from Defendant. The Court makes the following determinations:

1. Plaintiffs are allowed twenty days to supply to Defendant any limitations in their patent which require software limitations. Thereafter, the Parties shall present to the Court a proposed protective order which will permit two law firms representing Plaintiffs and one expert witness to access the source code, under the terms of the protective order.

2. Defendants shall supply to Plaintiffs a published report concerning a particular drug or episode requested by Plaintiffs, from the database identified in Plaintiffs' brief.
3. Defendants have agreed to supply a person to Plaintiffs who can explain to Plaintiffs how to access the 40 GB of electronically stored information already supplied.
4. The issue of blocked access to Defendant's website is moot, with Defendants' agreement to allow temporary access.


In its Motion to Strike, Defendant argues that Plaintiffs failed to produce an adequate privilege log related to this litigation. After Defendant filed the Motion, Plaintiffs provided a supplemental privilege log, which addressed the concerns set forth by Defendant in its Motion. Defendant now seeks attorney's fees and other expenses incurred in reviewing the initial log produced by Plaintiffs, and in bringing this Motion. The Court will take the issue of Rule 37 sanctions under advisement, to possibly be considered at a later time.

Accordingly,

IT IS HEREBY ORDERED that the Plaintiffs' Motion to Compel Production of Documents and Electronically Stored Information [doc. #87] is **GRANTED, in part**, and **DENIED, in part**, as set forth in the Memorandum and Order above.

IT IS FURTHER ORDERED that LDM Group, LLC's Motion to Strike Improper Chart, Compel Production of a Proper Privilege Log, or in the Alternative, Waive Claimed Protections [doc. #88] is **DENIED, with leave to refile**.

Dated this 2nd Day of October, 2009.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE